

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORACLE AMERICA, INC.,

No. C 10-03561 WHA

Plaintiff,

v.

**ORDER APPOINTING
RULE 706 EXPERT
AND COUNSEL**

GOOGLE INC.,

Defendant.

Having considered both candidates to serve as damages experts under FRE 706, Dr. James R. Kearl is hereby **APPOINTED** to serve as the Rule 706 damages expert. Attorney John Cooper of Farella Braun + Martel LLP is hereby **APPOINTED** to serve as his *pro bono* counsel. Attorney Cooper's duties are those described in the August 4 order (Dkt. No. 272).


Attorney Cooper shall work with counsel from both sides to draft a proposed order describing the scope of Dr. Kearl's assignment and the procedures by which the parties will pay for his work and expenses. The proposed order should be filed by **NOON** on **SEPTEMBER 6, 2011**. Additionally, Attorney Cooper shall coordinate with counsel from both sides to make sure the other candidate who attended the August 19 hearing is reimbursed for the expense of doing so.

To accommodate Dr. Kearl's request for more time, the damages issues will not be tried on the current schedule. The precise trial schedule, however, will depend on the timing of the second large trial in an ongoing criminal matter before the undersigned judge. If the second large criminal trial begins on October 17 as scheduled, then the entire trial in the instant civil matter

1 will be delayed considerably. If the second large criminal trial does not begin on October 17,
2 then the liability portion of this civil trial will go forward on October 31 as scheduled, with all
3 damages issues reserved for a second trial. The damages trial would trail by at least a month,
4 beginning in early December at the earliest. This bifurcation would *not* change the total amount
5 of trial time available; the allotted time simply would be divided between the two trials. The
6 same jury would hear both the liability trial and the damages trial. Due to the uncertainty
7 regarding the criminal trial, Dr. Kearl's assignment should be planned such that it can be
8 completed by early December in preparation for a possible damages trial at that time.

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10 **IT IS SO ORDERED.**

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12 Dated: August 30, 2011.

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15 WILLIAM ALSUP
16 UNITED STATES DISTRICT JUDGE
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